UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/625,820 | 07/23/2003 | Jonathan Maynes | CEN0017-01 | 7804 |

7590 04/24/2007

Richard B. Taylor
James L. Cordek
Solae, LLC
P.O. Box 88940
St. Louis, MO 63188

| EXAMINER | |
|---|---|
| PADEN, CAROLYN A | |
| **ART UNIT** | **PAPER NUMBER** |
| 1761 | |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|---|---|---|
| 3 MONTHS | 04/24/2007 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/625,820 | MAYNES, JONATHAN | |
| | Examiner | Art Unit | |
| | Carolyn A. Paden | 1761 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *13 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-5 and 8-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 8-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 13, 2007 has been entered.

The rejection of the claims under 35 USC 102 has been withdrawn in response to applicants' amendments to the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umeda as further evidenced by Merck Index alone or in view of Losch for reasons of record.

Applicant argues that Umeda does not show a phospholipids composition having the ingredients of the claims. Applicant argues that Table 3 does not contain the ingredients of the claims. As discussed in the

last office action, Table 2 discloses an obvious alternative to the phospholipids composition of the claims. Applicant refers to the method but the rejected claims are product claims.

Claims 8-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pardum (3,661,946) in view of Umeda (5,833,858) and as further evidenced by Merck Index.

Pardums discloses phosphatide extraction with 90% ethanol. In example 3, soy lecithin is combined with alcohol at 50C, cooled to 20 and stirred. After allowing the mixture to stand overnight, the layers of extract and residue were separated and analyzed. The claims appear to differ from Pardums in the recitation of treating the residue of alcohol extraction more than once. It is very well known in the art to utilize multiple extractions to enhance the purity of extracted ingredients. It would have been obvious at the time of applicants' invention to extract lecithin with alcohol more once in order to further purify the lecithin product. It is appreciated that the concentration of alcohol in the solvent is not the same as it is in Pardums but no unobvious or unexpected result is seen from this particular ratio. It is also appreciated that a high shear mixer is not mentioned but no unobvious or unexpected results are seen from the

selection of a particular type of mixer. Finally, it is appreciated that a centrifuge is not mentioned but a centrifuge would have been an obvious way to speed up the separation of the residue from the extract in Pardums.

The claims additionally appear to differ from Pardums in the particular composition of the lecithin. Umeda discloses defatted soybean lecithin in Table 2, which has the phosphatidylcholine (PC) of the claims. Although the acetone soluble content is not mentioned, this value is a well-known property of lecithin, as evidenced by the Merck Index. Thus one of ordinary skill in the art would anticipate that the defatted lecithin of Table 2 would also have the acetone insoluble content of the claims due to the high content of lecithin phospholipids. Although the phospholipids composition is isolated by a different method, it is not seen that the lecithin composition would be different because both Pardums and Umeda have selected soybean lecithin as a starting material.

The claims also appear to differ from Pardums in the extent of acetone insoluble fraction that is present in the sample. Merck Index teaches that acetone insolubility in lecithin is a property of the product. Thus one of ordinary skill in the art would expect the acetone insoluble content of Pardums to go up with the purity of the lecithin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden

CAROLYN PADEN 4-22-07
PRIMARY EXAMINER 1761